



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY SUMMARY

Final Amendments to the Emergency Planning and Community Right-to-Know Act

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Introduction

On 17 October 2008, the U.S. Environmental Protection Agency (EPA) issued the [prepublication](#) of the final rule to amend several changes to the Emergency Planning (Section 302), Emergency Release Notification (Section 304), and Hazardous Chemical Reporting (Sections 311 and 312) regulations under the Emergency Planning and Community Right-to-Know Act (EPCRA). The changes provide additional clarification to the reporting requirements and revise the Tier I and Tier II reporting forms. The final rule will become effective 30 days after publication in the *Federal Register* (FR).

Background

On 8 June 1998, EPA published proposed revisions to the EPCRA ([63 FR 31267](#)). The 1998 proposal explored several ways to improve the efficiency of the reporting requirements under EPCRA Sections 311 and 312. EPA proposed four major revisions and provided draft guidance on various reporting options that states and local agencies might wish to consider in implementing the hazardous chemical reporting requirements. The four major revisions proposed included the following:

1. Higher threshold levels for reporting gasoline and diesel fuel at retail gas stations
2. Relief from routine reporting for substances with minimal hazards and minimal risks
3. Relief from routine reporting for sand, gravel and rock salt
4. "Other Regulatory Changes," such as reporting of mixtures; removing the Tier I and Tier II inventory forms and instructions from the CFR, as well as minor revisions to the forms and instructions; and minor changes to the emergency planning and emergency release notification regulations (40 CFR part 355)

EPA finalized item 1, higher threshold levels for reporting gasoline and diesel fuel at retail gas stations, on 11 February 1999 ([64 FR 7031](#)). In the final rule issued 17 October 2008, EPA is planning to finalize only item 4 above—"Other Regulatory Changes." The remaining two proposed revisions [items 2 and 3 above] and the draft guidance related to EPCRA Sections 311 and 312 for states and local government agencies may be finalized later.

Summary of the Final Rule

This action addresses only those changes proposed under the heading “*Other Regulatory Changes*” outlined in the 1998 proposed rule. This final rule includes revisions to the Emergency Planning Notification, Emergency Release Notification, and Hazardous Chemical Reporting regulations, codifying statutory requirements and clarifying certain interpretations and policy statements that EPA has provided to the regulated community. In addition to the regulatory changes, EPA is finalizing the plain language format of the regulations. Specifically, the changes in this final rule include the following:

- Finalizing some of the proposed revisions on applying threshold quantity and the reporting of mixtures under EPCRA Sections 311 and 312
- Removing the Tier I and II inventory forms and instructions from the CFR, as well as making some minor changes to the forms and instructions
- Codifying certain existing policies and interpretations in 40 CFR parts 355 and 370

These changes are described in detail in the following sections.

Mixtures

In the final rule, EPA will require that when facilities are determining whether the threshold quantity of an extremely hazardous substance (EHS) has been met, they must include the total quantity of that EHS present in the pure form as well as in any mixture, even if the mixture including the EHS also is being reported as a hazardous chemical.

For hazardous chemicals that are mixtures and do not contain any EHS, facilities have the option to use one of the following two methods when determining whether the threshold quantity is present:

1. Add together the quantity present in its pure form and as a component in all mixtures (even if the mixture is also being reported as a hazardous chemical)
2. Consider the total quantity of each mixture separately

Tier I and II Form

In the final rule, EPA will remove the forms and instructions for Tier I and II reporting from the CFR. However, the revised Sections 370.41 and 370.42 will contain narrative descriptions of the Tier I and Tier II information requirements. The Tier I and Tier II forms and instructions will instead be available on EPA’s [website](#).

In the proposed rule, EPA included several changes to the forms and one change to the instructions. The final rule adds an additional change from Standard Industrial Classification (SIC) to North American Industry Classification System (NAICS) codes on Tier I and II forms, and the inclusion of “chemical name or the common name of the chemical as provided on the Material Safety Data Sheet” on the Tier II forms. Significant future changes to the forms will be considered through the rulemaking process and public comments will be solicited before changes are implemented.

It is important to note that state regulatory agencies may require additional information or formats. Facilities should determine if their state regulatory agency requires any additional requirements or formats before reporting.

Penalties for Noncompliance

The penalties for noncompliance with the emergency release notification and hazardous chemical reporting requirements have been removed. In the final rule, EPA will remove this language from the regulations because penalties periodically are adjusted and published in the FR in separate actions.

Definitions

EPA will include a definition section at the end of each part in Sections 355.61 and 370.66 under the heading *“How are key words in this part defined?”* to make it easier for readers to determine how specific terms are used in the text of each part. EPA also proposed some minor revisions to some of the terms found in the definition sections.

Additional Changes to 40 CFR 355 and 40 CFR 370

In the final rule, EPA also will make the following changes to the language in 40 CFR 355 and 40 CFR 370:

- **SERC and LEPC**—EPA will replace the phrase “State Emergency Response Commission” with SERC and the phrase “Local Emergency Planning Committee” with LEPC in 40 CFR Parts 355 and 370, because these terms are now commonly used by the regulated community and the public. These terms are added to the definition sections in 40 CFR 355.61 and 40 CFR 370.66.
- **Quantity of an extremely hazardous substance in a mixture**—The instructions for calculating the quantity of an EHS present in a mixture for emergency planning in Section 355.30(e)(1) are now in Section 355.13. The terms “mixture” and “solution” are both used in these instructions. EPA will remove the term “solution” because the definition of the term “mixture” includes “solution.” EPA also replaced the term “mass” with the term “weight,” which is more familiar to the public. Section 355.13 also will include an example calculation to provide additional clarity.
- **Extremely Hazardous Substances in solid form**—The instructions to determine which threshold planning quantity (TPQ) to use for an EHS in solid form in Section 355.30(e)(2)(i) are now in Section 355.15.
- **Facility Emergency Coordinator**—EPA will require under Section 355.20 that the SERC be notified of the name of the facility emergency coordinator if there is no LEPC, or the Governor if there is no SERC. EPA also will require that facilities provide notice of the name of the facility emergency coordinator at the time that the facility reports it has become subject to the emergency planning requirements. Notification must be provided within 60 days after becoming subject to the emergency planning requirements.
- **Emergency Planning Notification**—EPA will require that a facility notify the SERC *and* the LEPC when the facility becomes subject to the emergency planning requirements.

- **Changes relevant to emergency planning**—EPA will require that facility owners or operators inform the LEPC of any changes occurring at the facility that might be relevant to emergency planning within 30 days of such changes. Changes relevant to emergency planning may include, but are not limited to, notifying that facility is no longer in operation, new EHSs are present at the facility, EHSs are moved to a different location at the facility, EHSs are no longer present at the facility, etc.
- **Format for emergency planning and release notifications**—EPA provided clarification that the emergency planning notification under EPCRA Section 302 should be provided in writing.
- **24-hour time period for release notification**—Under EPCRA Section 304(a), releases are reportable if they occur in a manner that requires, or would require, notification under CERCLA Section 103(a). EPA's interpretation has been that the 24-hour time period under CERCLA also applies to EPCRA. EPA will require in Section 355.33 that the "release of a reportable quantity within any 24-hour period" triggers the emergency release notification requirements.
- **Releases during transportation**—EPA will revise the language for the emergency release notification requirements that apply to the release of a substance during transportation (or storage incident to transportation) to provide clarity.
- **Releases that are continuous**—Under the definitions in 40 CFR 302.8(b), a release that is continuous and stable in quantity and rate qualifies for reduced reporting requirements under EPCRA. It is clarified that the four notification requirements for these continuous releases are to be made to the community emergency coordinator of the LEPC and the SERC of any state that is likely to be affected by the release (in addition to the notifications required under 40 CFR 302.8).
- **State or local format for reporting inventory information**—EPA will allow state or local forms to be used for reporting inventory information, provided that the content is identical to the uniform federal forms (Tier I or Tier II forms). The provisions allow the submittal of inventory information in a variety of ways, including electronic, as long as all the information required under the statute and its implementing regulations is provided. These revisions are provided in Section 370.40.
- **SERC or LEPC response to a request for Tier II information within 45 days**—In order to be consistent with the language in EPCRA Section 312(e)(3)(D), EPA will add, "A SERC or LEPC must respond to a request for Tier II information within 45 days of receiving such a request."

Potential Impact to NASA Centers

National Aeronautics and Space Administration (NASA) Centers potentially affected by this final rule include those that submit Tier I and/or Tier II reports under EPCRA. NASA Centers that have reported mixtures in the past or will report mixtures in the future should take note of the new requirements for reporting mixtures under the final rule. NASA Centers also should check with their SERC and LEPC for local reporting requirements, including state-specific forms and methods for submitting the reports. NASA Centers should check their response plans to make sure they reflect the 24-hour release notification and the 30-day notification for a change in the Center that would affect emergency planning; these changes should be made to local administrative policies and procedures, also.